

Nixon and the Pentagon Papers: Secrecy, Government, and the Media (1987)

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NOVEMBER 21, 1987 | Experts and members of the press spoke to the Richard Nixon Symposium at Hofstra University about the relationship between media and the government in the context of classified documentation. Specifically, the discussion gravitated toward the release of the 'Pentagon Papers,' and the Nixon Administration's decision to prosecute the individuals responsible for the leak.

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coming up next a retrospective of the presidency of Richard Nixon is the conference theme of a program sponsored by Hofstra University the panel focuses on secrecy the government and the media a good afternoon as we get to the end of this extravaganza it's my pleasure to introduce the moderator of the last panel Victor Navasky old friend former client and he's a graduate of swathmore and as you know he's the editor of the nation and has been a leading observer of the events that we're talking about and a journalist of folks have won prizes a number of writing prizes including naming names and Kennedy Justice and it's a great pleasure to introduce Victor Navasky as the moderator of the last panel of the next last man [Applause] thank you I've been instructed to mention that within minutes of this session you may obtain copies of tapes that are that will reflect what happened here except for 18 minutes the Jim the gentleman Oh princess now I want to compliment the organizers of this conference on selecting as impartial moderator the editor of a left-wing radical rag and to put on the panel as a presumably embattled participant among others a Network News anchorman and the former

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Network News anchorman and the former editor of one of our most distinguished newspapers these guys always claim that they're impartial but in fact at another time and on another panel on another occasion I would argue that they have what is what I would call the ideologies of the center and the problem with the spokesman for the Nixon White House and white clay might say is impartial moderator who we're delighted to have here is that they miss perceived and misrepresented the mainstream press as some sort of liberal conspiracy when in fact all they were were ideological centrists so those of you who are at the last panel would heard the complaint that it was stacked because it had you know too many people from one side and only one representative of the Nixon point of view I see this as stacked the other way that you have two alumni of the administration you have two representatives of the ideology of the center you have two academics who are also present themselves as impartial and and then as a moderator I don't get a to tell you what's really going on so but forgive these in moderate remarks from your moderator now I can think of no panel at this remarkable and wide-ranging conference with more contemporary resonance than a panel on the subject of secrecy the government and the media how much if any of the secrecy lies and illegal actions revealed in the recently released iran-contra gate report are a legacy of our failure to address properly the pre Reagan systemic breakdown associated with Watergate and Vietnam as an assault on constitutionalism how much of what

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on constitutionalism how much of what was stamped secret in the Nixon years I could add by the way the Kennedy years in the Johnson years but we'd happen to be talking about the Nixon years how much of what was stamped secret in the Nixon years could safely be made public have we really accepted the idea that the lies the that that have we accepted the idea that the less the public knows the greater our national security we hear much about the harm to our national security if certain information gets out forget that our adversaries the USSR like the National Security Agency listens in on everything we say anyway but what about the disasters that occur as the result of information kept from the public what is the relationship between Richard Nixon's comments to David Frost but the President does it it's not illegal and foreign halls reference to a higher law is it in retrospect desirable necessary for government officials to make statements which quickly become you should forgive the expression no longer operative now the papers this morning that we're about to hear are sharply focused on the legacy of the Pentagon Papers and on President Nixon's conception of executive privilege these are important starting points for serious probing of the larger issues posed for this panel and I hope and expect that our commentators and you people out there in the question period will explore not merely the issues raised by the papers but the implications of these papers the let me tell you right now who the participants of the panel are in relatively short form they have very long and

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form they have very long and distinguished resumes all of them so that we can get on with the business of the afternoon I have cruelly requested of our panelists that they try to restrict their summaries of their learning papers to ten minutes each we then will move from the papers to the commentators and then we'll see what happens our first paper is going to be on secrecy and democracy the unresolved legacy of the Pentagon Papers and the author of this paper is John Kincaid who is the director of research of the Advisory Commission on integrate intergovernmental relations in Washington DC mr. Kincaid is got his PhD from Temple University he has an MA in urban affairs from the University of Wisconsin he did additional study at the University of Michigan in Ann Arbor and he has a list of publications that is more than I could carry up to the platform but is very impressive the second paper of the panel is called President Nixon's conception of executive privilege defining the scope and limits of governmental secrecy Mark J Roselle who will deliver it is a member of the department of political science at Mary Washington College he got his PhD from the University of Virginia he got his MA his MA from the University of Virginia in public administration he too has won many academic awards both at the University of Virginia and at Eisenhower College had a distinguished academic

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College had a distinguished academic career and I won't go down his list of publications our commentators need little introduction for me they they are for the most part I suspect known to you first we're going to hear from Gerald Warren who is presently the editor of the San Diego Union he was graduated from the University of Nebraska in 1952 with a Bachelor of Arts degree and a major in journalism from January 1969 to August 1975 who is deputy press secretary to the president in the Nixon and Ford administration's he became editor of the San Diego Union in September of 1975 our second commentator will be Tom Brokaw Tom Brokaw as you know is the anchor of NBC Nightly News and he during the period of 73 to 76 he was NBC News as White House correspondent and during that period he covered all important Watergate developments he's only three years overdue and an article he is promised in the Nation magazine Ron Ziegler is presently president of the National Association of truck stop operators in November 1980 he assumed that position he served as chief chief spokesman for President Nixon and the White House staff from 1969 to 1974 and directed and administered a staff responsible for press corps logistics and communications policy he's he was a familiar figure on television during all of those years Howard Simons was managing editor of the Washington Post for 13 years he was

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Washington Post for 13 years he was managing editor during the Watergate period he became curator of the Nieman Foundation for journalists at Harvard in 1984 and as was pointed out to me earlier with with he is the only man in the room who knows the identity of deep throat with that why don't we start unless deep throat is also a tempter I thought you were deep throat you thought what you thought I was deep throat well if the organizers of this conference knew what they were doing they would have announced that they would reveal deep throat at the banquet and had three people come up with a bag on each head and then you know well the real deep throat please stand up anyway so our first paper let's get on with the show [Applause] Thank You Victor the issues that I want to address in the paper this afternoon are some of the unresolved legal issues in terms of governmental secrecy arising out of the case involving the release of the Pentagon Papers in 1971 as you're well aware the Pentagon Papers had a significant event effect on events of that time and I think historically played an important role in the course of the American involvement in Vietnam and also played an important role in ultimately in the downfall of the Nixon administration in 1974 in addition I think it's fair to say that the the Pentagon Papers had a long-run effect on how we conduct foreign policy in the United States in 1971 there were members of Congress who refused to look at the documents now known as the Pentagon Papers because they were classified top-secret and they didn't believe that they had the authority to look at those documents today such an attitude on the

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documents today such an attitude on the part of members of Congress would be inconceivable so that the release of the Pentagon Papers in 1971 constituted a kind of watershed in American history and in and of themselves played I think an important role in subsequent developments nevertheless the trial of Daniel Ellsberg and Anthony Russo associated with the Pentagon Papers raised the number of difficult issues for secrecy and public knowledge in a democratic society and represented a novel attempt on the part of the Nixon administration to provide a judicial basis for prosecuting people for releasing information to the American public just by way of brief background as you know the Pentagon Papers were published in the New York Times in June of 1971 the Attorney General secured an injunction against the New York Times to stop them from publishing the papers then the Washington Post began to publish the papers an injunction was gotten to them and then other papers began publishing them and the Justice Department was chasing around the country trying to get injunctions against newspapers for publishing these these documents ultimately in a very hurried decision the Supreme Court ruled in favor of the newspapers it overturned those injunctions allowing the publication to proceed however there were sharp dissents in that Supreme Court decision and in addition the court generally held that under certain circumstances the Supreme Court might uphold the idea of preventing newspapers in advance from publishing information in their possession so that those injunctions in 1971 were the first time in American history that the United States government had exercised prior restraint on newspapers and events that outstripped even the Sedition Act of

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outstripped even the Sedition Act of 1798 now what were the issues in the subsequent trial very soon after the release of the papers Daniel Ellsberg was indicted for photocopying the papers feeling that they might have to build a better case and being uncertain of the grounds of prosecution the government continued to investigate the situation both legally and illegally it was two months after the initial indictment that the plumbers Union unit broke into the office of Ellsberg psychiatrist to obtain additional material presumably to discredit him and his motives with regard to the pentagon papers at the same time the FBI was also trying to question Anthony Russo with regard to the Pentagon Papers he refused to respond to FBI questions he ended up being thrown in jail for more than a month for contempt of court and finally at the end of 1971 a new indictment was issued by the Justice Department charging both Ellsberg and Russo with counts of conspiracy espionage and theft with regard to photocopying the documents which are now known as the as the pentagon papers this prosecution I think we have to say was a political prosecution in the classical sense there is no statutory basis for executive classification of information as they pertain to the pentagon papers official secrecy in the United States is limited to atomic energy secrets and information having to do with

military codes neither of which were involved in the Pentagon Papers case another interesting point something that is often overlooked is that Ellsberg and Russo were not prosecuted for releasing the Pentagon Papers to the newspapers they were prosecuted simply for photocopying the

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prosecuted simply for photocopying the documents and the period covered by the indictment ended nine months before the papers appeared in the newspapers it would appear that the administration was very concerned about avoiding a direct collision with the press the New York Times and The Washington Post and so nothing in the prosecution of Ellsberg and Russo had to do with the actual release to the public of the other Pentagon Papers now what were the issues in this trial and why are they so troubling the indictment broke down into three broad categories of charges one the first was conspiracy to defraud the United States and an agency thereof and I'm quoting from the indictment by impairing obstructing and defeating its lawful governmental function of controlling the dissemination of classified government studies reports memoranda and communications the key issue in this charge revolves around the question of lawful what is the lawful governmental function and what does that mean in terms of criminal prosecution the classification of government documents such as the pentagon papers are based upon executive order in a Democratic Society one can presumably not be criminally prosecuted for violating an executive order ordinarily with regard to classified documents if you are a government employee and you release the documents you can be administratively reprimanded because there is no criminal statute if you are not a government employee then there isn't much the government can do about it and there is no basis for a criminal prosecution what the Justice Department did in this case was to construct a novel interpretation of law and to argue in the trial that an executive order and I quote has the force of law whether promulgated under a

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force of law whether promulgated under a direct statute or under the authority of the executive which is not by statute which comes from its constitutional power there is no distinction between those two in other words on the basis of the executive order alone with no statute standing behind it the government maintained that it could send a person to prison for 50 years and fined them for one hundred and twenty thousand dollars which was the penalties that would have been levied against Daniel Ellsberg this caused the judge in the trial a considerable amount of consternation and further arguments would have asked from the government to justify the basis of this charge and subsequently what the government maintained in the trial is that admitting that there is no criminal statute standing behind the executive order the government argued that the Freedom of Information Act in a sense implicitly justified prosecution for violation of the executive order and that is that the government maintained that the Freedom of Information Act by enacting that wall the ingress implicitly provided a statutory foundation for the executive classification system and thereby implicitly recognized the authority of the executive branch to defend that system so we had a very novel use of a conspiracy statute applied to an executive order the implication of which is that had the defendants been in fact convicted and that had been upheld in essence they would have been convicted under an executive decree system in which the president could create executive orders which have no statutory foundation and people could be prosecuted for violating them ironically no one had ever been prosecuted and I don't believe since then has ever been prosecuted for violating other aspects of a classification executive orders namely those executive orders require

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namely those executive orders require the documents be declassified at certain points in time and no one has been prosecuted for a failure to declassify a document the second set of charges in the trial dealt with espionage now this was a rather curious charge as well since the actions alleged in the indictment involved only the photocopying of documents the government never accused Ellsberg and Russo of giving these documents to any foreign agents or foreign power the implication of this prosecution as Tony Russo pointed out was that the Nixon administration seemed to be assuming that the American people were the enemy in

charging espionage under this circumstances what the government claimed basically is whenever any American citizen finds a document which is stamped top secret and doesn't turn it over to the government he or she is guilty of espionage so beware of that if you ever see such a document lying on the street or something like that furthermore according to the 80 year history of the Espionage Act to prove espionage you have to prove that the defendants had an intent to aid a foreign nation or injure the United States in this case the government alleged that there was no need to prove intent that the mere release of the information would have injured the United States so as a result the testimony in the trial had a very weird attitude about it and that is to say that the government had to prove that if the papers had been released at the time they were photocopied they would have injured the United States or aided a foreign nation an entirely hypothetical situation the third set of charges dealt with theft and the first issue here concerned the question of what was stolen initially the government claimed that that the physical documents were

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that that the physical documents were stolen but when the defense presented information showing that the documents were the personal copies of three former Defense Department officials and that they had approved Ellsberg's removing these documents from the RAND Corporation's library the government backed off from the notion that what was stolen were physical documents and then proceeded to argue that what Ellsberg and Russo had stolen by way of the Pentagon Papers was the arrangement of the words on the pages and the ideas conveyed by that arrangement this is a crucial issue because in a democratic society information presumably belongs to the people if you look at government documents they are not copyrighted they're not copyrighted because the government in a democratic society does not have a proprietary interest in information and what in a sense the government was charging then was that Ellsberg and Russo were stealing information had this been upheld it would have also implied that since Ellsberg had shared these documents with members of Congress that if he was guilty of theft then members of Congress would have also in effect been guilty of theft for looking at these documents the presumption being that the information belong to the executive branch and was stolen from the executive branch and that even another branch of government could not see them so in the conspiracy charge then we had a situation where in a sense the executive branch was asserting an executive decree authority in the espionage charged the government in a sense implicitly assuming that the American people are the enemy and in the theft charge the government was maintaining that it had a proprietary interest in information this trial was an attempt by the executive branch to get the judicial branch to do what the legislative branch has refused to do since 1917 and that is to enact an official secrets act in the United

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official secrets act in the United States or to revise the Espionage Act in such a way as to cover classified information as released to the American people if you look at the criminal code revision recommendations of the Nixon administration all of the points that were raised in the Pentagon Papers trial are covered in the proposals that the administration had made for criminal code revisions and if those proposals had been accepted by the Congress and fortunately in my view they were not we would have had the functional equivalent of an executive Secrets Act in the United States and one of the things that the administration wanted in criminal code revision and which had also maintained in the trial is that the fact that a document might have been incorrectly classified top-secret would be no defense in a case so the theoretically a document on which somebody accidentally dropped the top-secret rubber stamp and you picked it up and somehow were charged with espionage that would be no defense in that kind of situation where are we today as a result of the Pentagon Papers none of these issues are resolved legally in the United States the trial was dismissed for gross governmental misconduct in some respects we were worse off we now have arrangements with the CIA to censor books published by CIA agents we have executive agreements regarding secrecy and we still have a highly politicized situation with regard to executive secrecy in my view there it probably is no legislative or judicial way in which we could finally resolve these issues they rely a

great deal I think on the honor of the people who are serving in government and throwing a number of presidential administrations that honor has been called into question so we still find ourselves in a very ambiguous situation with regard to the right of

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situation with regard to the right of the government for the privilege of the government to keep some information of secret and the right of the people in a democratic society to be free to know that information thank you Margaux is out I'm gonna be speaking about President Nixon's conception of executive privilege now President Nixon's administration we know is still remembered mostly for its role in one of our greatest constitutional crises and I'm going to focus on a central issue of that crisis the scope and limits of executive privilege in our separation of powers system I'm going to argue that while executive privilege has clear legal and historical basis in our separation of power system President Nixon's conception of the executive privilege is too broad and lacks legal or historical foundation adopting Nixon's standard I believe would undermine the delicate balance of power that exists between our separate branches of government but we should also read exist adopting I believe the standard of critics like Harvard University professor albergue er who argue that all claims of executive privilege are baseless i define executive privilege as the right of the president and important executive branch officials to withhold information from Congress the courts and the public and there is little agreement among scholars today as the first of all whether executive privilege is a legitimate power and second if it is legitimate what the limitations are on claims of executive privilege how much of the disagreement can be attributed to the founding fathers lack of specificity on the issue of executive privilege for example the Constitution lacks any reference to the privilege leading some critics to call executive privilege a constitutional myth and others to argue

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constitutional myth and others to argue that executive privilege is such an obvious executive power that the framers knew they did not need to make an explicit grant of that power well the framers I believe recognized their inability to identify in advance all of the possible contingencies under which presidents may prudently exercise the privileged power their solution to the potential abuse of the privilege was not to delineate explicitly the scope and limits of the privilege but instead they relied upon the institutional checks and balances provided by our system of separated powers 200 years experience under our Constitution provides ample historical evidence and legal precedent to establish some general boundaries defining the scope and limits of executive privilege certainly executive privilege can be invoked first of all when the nation's security is threatened by divulging information or secondly when the confidentiality of internal White House deliberations directed towards protecting our national interests is jeopardized thirdly when the personal privacy of public officials is threatened for no public gain and forth when criminal justice enforcement is jeopardized now these are admittedly very broad categories that are open to interpretation the resolution of controversies over claims of executive privilege therefore will have to emerge I believe from the give-and-take between our political branches of government I shall return to the central argument but let me take up right now Richard Nixon's conception of executive privilege in comparison to his predecessors claims of privilege the scope of President Nixon's claims were more broadly based President Nixon went beyond notions of protecting the nation's security the public interest and personal privacy to using claims of executive privilege for purposes of political expediency withholding of embarrassing but not vital information and covering up executive abuses of power so what is mr.

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executive abuses of power so what is mr. Nixon's conception of executive privilege first of all executive privileged is used for purposes of political expediency that was a common folk saying that goes somewhat like where you stand on an issue depends upon where you are sitting and Nixon's view of executive privilege I think was very much influenced by his institutional perspective he strongly opposed executive privilege as a member of Congress and made very broadly based claims of privilege as president in 1948 representative

Nixon protested President Harry Truman's claims of executive privilege Nixon exclaimed that the executive privilege and I quote cannot stand from a constitutional standpoint and quote and he protested that executive privilege gives Congress no right he said to question the judgment of the President and that Congress cannot properly conduct investigations of executive branch actions if the president claims of privilege while representative Nixon's protestations are very ironic given President Nixon's actions a quarter century later as president Mr. Nixon adopted the view that Congress lacks the legitimacy the question or to contest executive claims of privilege in President Nixon's conception of the separation of powers the president reigned supreme and may determine the scope and limits of his own powers President Nixon claimed that whenever a dispute occurred between the political branches over executive branch information the president's claim of executive privilege simply resolved the dispute President Nixon even questioned the legitimacy of the courts as referees in our political system in a revealing quote President Nixon stated during Watergate that the manner in which the president exercises his assigned executive powers is not subject to questioning by another branch of government this leads me to the second category of Nixon's conception of executive privilege and that is that executive privilege has no limits well

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executive privilege has no limits well if the judiciary lacks authority to question executive activities then logically anything the president does is legitimate Mr. Nixon clearly articulated this belief in his 1977 interview with David Frost when questioned by Frost about the limits on presidential power Mr. Nixon replied when the President does it that means it is not illegal well this statement implies that there are no limits on presidential authority including the power to withhold information all that is required is presidential approval of an action in a clear refutation of the more common constitutional view that no person is above the law Nixon argue that presidential actions had higher standing than the law itself now third under Nixon's conception of executive privilege executive privilege belongs to all executive branch officials for President Nixon executive privilege was not a right possessed only by the president and selected White House insiders Nixon believed that executive privilege could be invoked by the president on behalf of all executive branch officials President Nixon claimed that the president and his aides could not be questioned about their actions by the other branches I'll quote him if the president is not subject to such questioning it is equally inappropriate that members of his staff be so questioned for their roles are in effect and extension of the president the President Nixon also claimed an executive privilege power for the entire federal bureaucracy Richard Kleindienst asserted on behalf of Mr. Nixon to Congress lacked the authority to call any employee of the federal government to appear before Congress if the president decided to bar such testimony President Nixon also defended the right of executive branch members to claim executive privilege for themselves let me turn now to the broader issue that I'm treating here which is the proper scope and limits of executive privilege in our separation of power system I think one result of the Nixon theory of

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think one result of the Nixon theory of executive privilege and of the events surrounding Watergate is that they have enhanced the stature and recognition of those strict opponents of the privilege and most notably we have the many writings of Professor Alvin Berger who claims that executive privilege is a constitutional myth and that claims of executive privilege are at all times groundless a burghers analysis identifies four different arguments supporting the view that executive privilege lacks any foundation in our governing system first of all the Constitution nowhere explicitly grants an executive power to withhold information secondly the framers fear tyranny and thereby avoided creating a too powerful executive third Congress is the grand inquest of the nation and must have access to all executive branch information to carry out its duties and fourthly there are well documented abuses of the privilege by our chief executives well I think each of these arguments are defensible in themselves yet Berger's thesis that executive privilege is completely groundless I believe is as problematic as Nixon's claim that there are no legitimate limits on executive privilege the problem presented by the Nixon and Berger perspectives is that each attempts to find a completely unambiguous answer to the nature and limits of initial power one perspective sees no limits on the privilege at all the other sees no right to withhold information ever well executive privilege is neither a myth nor an absolute unlimited presidential

power executive privilege in more limited form than the neck Sounion conception has intellectual historical and legal roots in our separation of power system i want to turn very briefly to my evidence the intellectual historical and legal roots of executive privilege and I'll sum this up rather briefly beginning with the intellectual roots while executive

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intellectual roots while executive privilege is not granted explicitly in our Constitution the framers did think of and write about presidential secrecy the famed Federalist Papers particularly number 64 and 70 provide rather clear defenses of executive branch secrecy and also the two most influential thinkers of modern constitutionalism Locke and Montesquieu each wrote that while executive power usually must be limited the executives ability to act with force and discretion in times of emergency cannot be limited secondly the historical roots well understanding the framers views on executive Secrecy also requires that we look beyond their writings and to their actions for example our Constitutional Convention was conducted in secrecy and the delegates believed that it was necessary to protect the convention from external pressures our chief constitutional architect James Madison recalled no Constitution would have been adopted by the convention if the debates had been public our early presidents particularly Washington Adams and Jefferson claimed executive privilege on a number of occasions and two lists of many claims of executive privilege would just take up too much of our time it is important to note that our early presidents exercised the privilege cautiously and gave clear reasons for claiming the right to withhold information for example protecting the national security protecting the confidentiality of internal discussions and protecting treaty negotiations significantly in house debates over President Washington's use of executive privilege then representative James Madison asserted that an our constitutional system the executive has a right a due responsibility to withhold information under circumstances where public disclosure could be damaging and finally the legal basis of executive privilege there are a number of important court decisions supporting the doctrine of executive privilege now the most important for our purposes is of course US v Nixon where a unanimous Court affirmed the legitimacy of executive privilege as it is employed in

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executive privilege as it is employed in the Constitution the court also made clear that executive privilege is not an absolute presidential power let me turn finally to the question of the proper scope and limits of executive privilege I have offered some broad justifications for executive privilege including national security and protecting personal privacy I harbor no illusions that presidents will not claim national security reasons for withholding information where their reasons may be very different presidents will claim and we know have claimed national security reasons for keeping secrets when their motivations are partisan or when they wish to cover up wrongdoing but the answer to this dilemma is not elimination altogether of the source of power from which these abuses derived our founders knew and we know that any power once granted can be abused in other words the power to do good is always the power to do evil the only solution we have I believe is to encourage Congress to vigorously use its powers to challenge and to check claims of executive privilege if the president refuses to divulge information to Congress the Congress can threaten to withhold support for administration programs or to withhold appropriations for administration favorite programs in this way Congress is sending a clear message to the president to arrive at some satisfactory accommodation or face the prospect of legislative stalemate the president may find that he can satisfy congressional curiosity by divulging sensitive information to only a few highly respected congressional leaders who will not abuse their trust by divulging information for partisan or policy reasons of such a common accommodation allows Congress the opportunity to review the legitimacy of the president's claim of privilege without publicly divulging sensitive materials so my point is that if we accept the legitimacy of executive privilege we have little choice other than to rely upon the conflicts and compromises build

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upon the conflicts and compromises build into our separation of power system to deal with controversies surrounding executive branch secrecy mr. Nixon's conception of an absolute unlimited executive privilege power lacks any basis in our separation of power system thank you [Applause] Jerrell Warren Hopi Nick Thank You Victor for those of you who could remember Victor's introduction of me earlier in the day you will note that I am perhaps the Ambala me of the dichotomy of embodiment of the dichotomy that the founding fathers had in mind when they set up this whole business of government and press I've been both a government official and a newspaper editor it's great to be doubly hard to believe I've noticed there's a certain discipline in sitting up here I've been out in the audience for most of the panel's throughout the week and there is a discipline up here where you where you feel that you must listen to the academic papers being read something that I hadn't felt before but I appreciate very much having a chance to hear the to such middle-of-the-road papers thank you thank you I cannot speak to the learn of dissertations on the fine legal points of secrecy as a matter of fact I'm the wrong person on the wrong panel because if anyone thinks Jerry Warren ooh any secrets of the Nixon administration he hasn't talked to Tom Brokaw or any other White House correspondent of the era if it was secret it was generally kept secret from me as well Ron Ziggler's dictum and I'm sure you'll talk about this but Ron's dictum was of what Warren doesn't know won't hurt me

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in most cases at work but not all the Pentagon Papers I'm fascinated by that subject I was not only nervous but aghast when the papers were being published to the New York Times now as an editor to carry out the dichotomy I'm delighted that they were published because it established in law and I do believe professor that this is one concrete thing that came out it established in the in the Supreme Court case law that prior restraint was not allowed in our system so in that regard I'm delighted I'm amused about the fact that the Nixon administration are the allegation that the Nixon administration wanted to create an official secrets act which was in the printed paper there was no thought about that that I know of during the discussion about the Pentagon Papers there are already laws and the books to keep things secret and that I believe is what the Nixon administration was was trying to to put in the law I as a deputy press secretary as I indicated I heated leaks as an editor I look forward to them they are obviously titillating one of the reasons I hated them was that nobody would admit who leaked watt to whom and you could get absolutely no guidance on this week the time that I've had on his show or one of the others might have be as an editor and I'm also been used as I watch a sequence of White House's continue to make the same mistakes that the Nixon White House made and why they cannot learn from our mistakes I don't know I'm reminded of a of a White House Chiefs of Staff Seminar symposium we had

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Chiefs of Staff Seminar symposium we had at the University of California of San Diego in January of 1986 last year and that was a it was a wonderful seminar Bob Haldeman was there and he he talked about that the system of both Nixon White House and how it worked and how in the last analysis it failed and the one most serious crisis of the Nixon administration he was asked if he had it to do it over again would he would he have done it differently and he said his answer was no this is mr. Haldeman speaking in terms of the structure we set up to begin with I think we established a superb self management system and structure much of which still survives today the thing that I wish we had done was to have kept the system intact through the greatest crisis that hit us had we followed our system we would have resolved the matter satisfactorily overall and here he referred to his belief that had they done that it would have caused some suffering through some of them some of the people involved but that would have been necessary he went on to say the fault is not that we had a bad system at all in my opinion it's that we didn't use the system when we needed it most and I believe that applies to two white houses up today I I believe where the pentagon papers are concerned that I still believe as an editor even though they make great stories but the massive unauthorized release of government papers is is very troubling it troubled me then and it troubled me now when I when I think of the of the guarantees of our freedoms under the Bill of Rights I believe that democratic governments have a very difficult time conducting

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have a very difficult time conducting their business in some sense of privacy Constitution may not specifically grant the executive the the power to keep secrets although there's certainly some argument on that and I would argue that I believe that some secrecy is helpful in the formulation of public policy and the most troubling leaks of all are those leaks as Henry Kissinger talked about the other evening of position papers which lead up to the formulation of policy when I left newspapering for government I did not renounce my principles and my sense of ethics what I returned to journalism as an editor after leaving the White House I did not renounce my dedication to orderly government and my yearning for that orderly government nor did I renounce my citizenship which I believe carries with it the full faith in our form of government and the concomitant hope that it will succeed as probably differentiates me from some there's one you've talked to but I really believe that and for that reason I support executive privilege when it's used in a balanced way I'm not going to argue the paper we just heard obviously the executive privilege power is being narrowed by the courts and by the legislature as it's being discussed I agree somewhat with the four points that Professor Rozelle iterated but I think there I think they were a bit too too sharp in his most cases when I was in government it was my job to keep secrets whatever the secrets they allowed me to have and now as an editor it's my job to find those secrets out I can think and I really thought a lot about this I can think of maybe two secrets that I knew about in the six and a half years that I was in the White House and the first one and the most interesting one was the time that that

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interesting one was the time that that Henry Kissinger came down with a stomach ache in Pakistan and they noticed came out from our embassy in Islamabad saying that Henry Kissinger had a stomach ailment and was unable to complete his schedule that day Al Haig we were at San Clemente and Al Haig called me in rod was on another mission and I asked him about this and he said well I can't tell you any more than you know right there that you've seen right there but let me tell you this you're walking on eggs out there and that was to tell me that I shouldn't say anything I guess he said just rely on the on the statement from Islamabad and you'll be all right well I did that and it was another classic case of Stonewall like I suppose but it worked and there was no suspicion that the reason Henry Kissinger had gastritis or whatever it was if he did was that he had gotten out of Pakistani airplane air force airplane and flown to Beijing to set up the president's visit this was in the summer of 1971 and he came back and announced that to the press corps at San Clemente and it was a complete surprise to the u.s. press corps to the White House press corps I remember a week earlier or less than a week earlier we'd stopped in Kansas City Missouri on the way to send San Clemente and the president spoke to a domestic briefing and he turned his remarks into a famous Nixon tour day horizontal of the geopolitical system in the world what structure in their world today and from that as hue side he said in the opening remarks from that you you and we should have realized that we was aiming toward China well Jim Deakin who was a very veteran White House correspondent left that briefing and slammed his notebook down he said that's the worst speech I've ever heard a

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the worst speech I've ever heard a president do and he'd been in the White House a very long time he had missed it entirely there was definitely a tip-off in there that that he was going to China and why he had hoped to do the Brits listening back in the in the State Department detected a change in formulation and when we got to San Clemente the switchboard lit up with all the British and the Asian reporters and the Commonwealth reporters who wanted to come to San Clemente those who rarely did so they detected something but our White House couldn't the other secret I can remember is during the December I believe it was December 72 bombing of Hanoi when the president was at Camp David Bob Haldeman and John Ehrlichman Henry Kissinger and Ron Ziegler were on a special assignment to Palm Springs and Al Haig was in was in Saigon trying to talk president too into this I was called in to the NSC office by Colonel Kennedy dick Kennedy and he told me that I was to call a special briefing on Saturday and that I would announce the end of the bombing in Hanoi and the fact that Henry Kissinger was going back to Paris to resume the the

broken talk talks with lay ducked oh well I was a tingle of course and that afternoon we flew up to San Clemente and talk to the excuse me to Camp David and talk to the president about it and we went through some questions and answers and I felt free there we are a colonel and a deputy press secretary running the government I just a little bit nervous about that even today but it worked that night I went to dinner at a friend's birthday party dinner for Madison I sat next to a an official from the Soviet embassy I had I had called a briefing and that went out on the wire and everybody gets the wire and the White House staff was somewhat nervous about it it was unusual but they said if Warren's gonna do it it

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but they said if Warren's gonna do it it can't be too important so they went home and they didn't think about it the only speculation was that that there would be a succession of hostilities during 10:00 and that had happened before that was pretty good speculation at the dinner that evening in a private room at though at the Madison this Soviet counselor turned to me and says I know what you're going to announce tomorrow I think he probably does I thought to myself I was scared to death I quickly left up dinner and went home and was nervous about it obviously he didn't know or thankfully he didn't know and he did think that that it was going to be a cessation of hostilities for Chet well that's a diversion those are the two secrets I can I could tell you about the only ones I can remember the also in his chiefs of staff symposium Don Rumsfeld quoted a quoted Winston Churchill and talking about the Normandy invasion and that I think is appropriate here Don said putting Winston Churchill sometimes the truth is so precious it must be accompanied by a bodyguard of we could argue that and I think I would argue that but I am sure that the nation was well served by having the time to conduct this diplomacy after these two decisions were taken the decision to send Henry to to Beijing and the decision to send Henry to North to Paris to talk with lay doctor it was orderly to have that secret so that diplomacy could continue so perhaps that's one of the benevolent secrets that were held during the Nixon administration I'm going to close by getting in my hope that at least two things have come out of the splendid conference one I think this conference

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conference one I think this conference has proved that you can have a really of the Nixon administration that is neither a white wash nor so blindly actor ammonius as to render it meaningless also I believe in hope that the students who attended this conference the next generation of scholars will see the president's men in a more objective life they will see that these they will see that these men did not enter a government with the sole aim of obstructing justice and committing other felonies that they are intelligent thoughtful patriotic persons who have made mistakes I also hope but I don't hold I don't really hope I don't have no optimism about this I would like to think that perhaps some of it present generation of scholars might think the same thing but I again I'm not very optimistic about that I would hope the other main benefit the come out of this conference would be a sense of civility in the examination of the Nixon years I would hope that the Nixon years could be examined as I've heard some historians talk about it during this conference in a less than passionate I would hope also that that civility somehow sometime could come into the White House briefing room and that there again would be normal civil relations between the president and the press and the training of people and and our governments because I firmly believe that we will continue to sputter and and lose our way unless we can find that respect for orderly government and for our leaders that they deserve thank you so much

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don't broke off I want to make a couple of clarifications if the out said one of the reasons that Victor Navasky is so pleased to be here this afternoon to have this as this audience is because the attendance here today exceeds the circulation of the nation by a factor of two and the reason I three years overdue and my promised piece to the nation is because the words of our mutual friend Kelvin but Rowan mr. Navasky pays for a piece in his magazine a fee somewhere in the upper two figures so we'll have to still be negotiating that I have already learned a great deal here this afternoon especially from our distinguished professors but also

from Jerry Warren I with some regularity when we would travel take Jerry out for dinner and ply him with martinis all evening long and always would go home terribly impressed how he had not given up anything it wasn't until today that I realized he didn't know anything that he could give up and the gentleman at the outset of this session who raised the eighteen and a half minutes brought back to my mind and Iran's I think at least a memorable day and the White House press room we had just been I think about four days before at a tour of the South President of the United States Richard Nixon had assembled the southern governors and he had told them that there would be no more bombshells and about 36 hours later Ron called me into his office with a few of my colleagues and he said I'm not quite sure I know how to explain this but there are eighteen and a half minutes missing from the tape here and so we learned very early on that when they said that there were no more bombshells that means it's a heavy art that meant that the heavy artillery was just getting ready to fall at the White House in those days I'd like to talk

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House in those days I'd like to talk first about secrecy in government specifically some about the Pentagon Papers case and about it generally yeah I do think that it is worth remembering that 200 years ago when the founding fathers gathered in Philadelphia formulate that remarkable document of the US Constitution they did so in great secrecy they seal the windows and pulled the shades must have been terribly uncomfortable in there but they felt it imperative that if they were to resolve the differences in this fledgling nation on that occasion that they had to do so in secrecy and I have come to wonder Howard what might have happened if the current press corps and its current makeup had been in Philadelphia that summer think about it James Madison nearly suffocating in that Hall taking those notes in that tiny handwriting finally deciding that he needs a breath of fresh air and so late in the afternoon he leaves Constitution Hall and he goes for a walk through the streets of Philadelphia he runs smack into Helen Thomas and Sam Donaldson and they're badgering him all the way up and down the street well what's going on in there mr. Madison catch you don't you have enough faith in the American people to tell them what you're doing in their behalf we hear that you're creating a monarchy and that you're gonna control you know most of the money in the country and I can just see that going on I'm frankly very grateful that they did that in secrecy and that Sam and Helen went around we wouldn't have a first amendment today I'm absolutely persuaded [Applause] [Music] secrecy in government is like beauty and bias in the eye to beholder very often Pentagon Papers and the other cases of secrecy in the Richard Nixon administration it seems to me are the direct result of Richard Nixon's attitude that nothing the president could do would be illegal moreover this

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could do would be illegal moreover this compulsion with secrecy in that administration I am persuaded was in large part the byproduct of an attitude on the part of the President and Henry Kissinger that they knew best the exercise of power and authority after all it is worth remembering in seminars like this and in our review of the history of those years President Nixon and Henry Kissinger kept secrets from the Secretary of State within the administration classified documents and privileged information in any administration this one the carter administration lyndon johnson john kennedy before it the coin of the realm the people who are in power in washington they spend it selectively they spend it in congress to win appropriations they spend it with a press to win public favor they spend it in the corridors really to win internal struggles yes there are occasionally times when secrecy is required on the part of the government when there are documents that truly should be classified and limited to only a few select authorized officials for review we had any number of examples of this need for secrecy recently in our lives the day that the libyan bombing attack took place any number of american news agencies were aware by deductive reasoning based on the information that we had been able to develop that day that f-111s have left their base in great britain the chera carrier task force was steaming south raining given the four warnings that we'd received at the highest levels of the Pentagon and the Middle East that an attack on Libya was imminent and yet no one went on the air or published that beforehand military operation was underway with American lives at stake it is an interesting discussion with in

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is an interesting discussion with in journalistic seminars about whether that was an appropriate thing to do desert one occurred during the Jimmy Carter administration while the American hostages were being held in Iran Richard valeriani of NBC News learned in December that a group of Americans had escaped the embassy in the initial confusion confusion and they were being held at the Canadian Embassy in Tehran and yet Dick gloriani and NBC News did not disclose that information we had a series of exchanges with the Secretary of Defense and the director of the Central Intelligence Agency when the first military payload went up on the space shuttle system and we delayed broadcast for 24 hours at NBC News based on their arguments that was not in the national interest or in the need of the right of the people to know what was in that space shuttle and then it turns out that at least two technical publications had described in much greater detail than what we knew in a publication the week before what in fact was in the space shuttle so we have dealt with secrecy we'll deal with it again it is a fluid situation in most administration's and I think that it requires a vigorous discussion between the press and those people who are on power and the Congress of the United States I believe as well that it's useful to reflect on what mr. Kincaid said on page three of his paper released the Pentagon Papers also diminish the ability of presidents to conduct foreign policy with secrecy and dispatch relatively free from the usual political restraints on presidential behavior and domestic fields now in this country we are bound up in the iran-contra affair a secret operation went on for almost two years a

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went on for almost two years a wide-ranging fashion in Central America and in the Middle East without any congressional oversight with in fact an attitude that was best characterized it seems to me by the joint committees on the iran-contra affair of the Congress of the United States is saying that it was characterized by lying by deception and by secrecy and I believe that the American public and I believe that this administration paid a terrible price for that secrecy and deception moreover it is worth looking at page 18 when you're reflecting on the Pentagon Papers as Jerry was talking about he was troubled by the release of massive amounts of classified information I'm just as troubled by the classification of massive amounts of government papers it is worth remembering as Kincaid is written it subsequently officials of the Nixon administration including dr. Kissinger acknowledged that publication of the Pentagon Papers did no noticeable harm to the United States gave no noticeable aid to the enemy's North Vietnamese with whom the United States was not officially at war furthermore from the very beginning of the White House debate over how to handle the publication of the Pentagon Papers there was serious consideration given to D classifying them on the spot there are volumes there are car loads of papers throughout Washington even as we sit here today classified that need not be there done because they protect the position of the people where they're making decisions that may or may not be in your best interest it seems to me we talked briefly about executive privilege my experiences with it as a journalist covering the Nixon White House I have a trivet trivia question for you here this afternoon many of you no doubt will remember that celebrated Houston news conference it was the last public news conference that Richard Nixon gave while

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conference that Richard Nixon gave while he was in office and Dan Rather and the President had a memorable exchange are you running for something mister rather the president asked no sir are you who asked the succeeding questions well I did it's lost in the backwash of history I'll tell you something interesting about that I had been intrigued by the question of executive privilege as claimed by the president at that time and how it may apply to a chief executive who was the subject of impeachment proceedings so I had worked very hard in the days leading up to Houston talk to the leading constitutional authorities on that very point and I asked them if they could help me with research and this included both conservative and liberal and moderate constitutional scholars if they could help me with the specific presidents mr. Nixon was citing as he claimed executive privilege among them Madison and Jackson the research came back that all them claimed executive privilege but uniformly with the caveat except in criminal proceedings or impeachment so that night

after that exchange with Dan Rather as I was the last questioner on the panel I asked Mr. Nixon if he had been historically inaccurate or misleading he acknowledged the soundness of my research but he stuck by his original position really always amused me in a way about the Nixon doctrine of executive privilege was its selectivity dealing with the judiciary committee who was absolute except in the White House felt it would gain advantage by making a conspicuous display of cooperation by shipping a trunkload of expurgated transcripts to the hill in what I remember what were they green binders Jerry I remember you being outside the West Wing of the White House and

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West Wing of the White House and summoning the reporters that day so that they could be loaded into the trunk of the car there were about 40 of them it made it look like it was a large shipment of transcripts going to the Capitol Hill when in fact we were about four pages in each binder it filled up the entire trunk of the car each binder was to a specific point and believe me it was a very specific point but were attempting obviously as is their right to make the best impression they could on the evening news that night moreover some of you may also recall that they decided that John Stennis might be the lone legislative exception to the right of executive privilege by giving him permission then to listen to some of the tapes and offer his interpretation and his judgment Esther that whether they were right or wrong executive privilege it seems to me does have its application I do believe that there are times when the President of the United States ought to be able to protect matters of national security especially involving military operations I think that there ought to be exchanges that he can have with his advisors that should be privileged that there are individuals who work in any given administration whose privacy should be protected as well but as we learn in the Iran-Contra affair the definition of national security the need for secrecy is not an airtight proposition that was by any reasonable interpretation of hairless undertaking in which it seems to me the risks far outweigh the rewards by every conceivable standard of measurement I believe that the reporting procedures must be tightened I think that the current recommendations of the joint committees on Iran-Contra make some salient points when they say that there ought to be a single committee on the hill made up of a smaller group of people because the fact of the matter is there is a good deal of leakage there but in fairness to those people who

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but in fairness to those people who serve in Congress there is a great deal more leakage in almost every agency of the executive branch of government and that includes the White House stem with more sophistication it's done generally with more reliability and accuracy but that's where the leaks occur by and large because they are the people who are in control of the information and they do it selectively I believe as well however that when it comes to executive privilege that there should be some kind of a statutory definition of a how and when it applies ought to be determined by law and most important perhaps there must be a mechanism for a speedy resolution of a conflict over the use of executive privilege let me just leave you with this thought I believe that during the days of Watergate and I'm sure that there will be protests on the part of my colleagues in the panel - Sigler Mr. Warren who are old pals from California incidentally I believe that especially in the closing days of Watergate the White House press corps heard on the side of caution we knew what was at stake we were talking not just about the historic fate of one man but we were talking about the great office the engine that drives the federal system of government in this country the presidency the Republic was at stake in its own way and so in fact when information came to us it was very carefully sifted and checked again and again and again tested not just for its accuracy but for its relevancy as well it was too easy in those closing days of the Nixon years to be able to pick up information from people who are attempting in a cheap way to make their own mark in that great scandal so I think that the press ultimately by and large acted responsibly and it's worth

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large acted responsibly and it's worth remembering that the American press is not in business to foster anarchy it is worth remembering that we are there we believe on a daily basis acting on behalf of the people of what is being done in their name they have a right to know about 200 years the system of government has been the envy of the world really and the foundation of our system of government has been a free and vigorous exchange of information we are strengthened by that free and vigorous exchange of information not weakened by it we are strengthened by knowing who is acting in our name and in what and finally let me leave you with something that I stole from David Brinkley some years ago I don't do our great Brinkley but I think that it's important to have some of the cadence at least of David Brinkley knows he says it's it's worth remembering that there are many countries in the world where the politicians have seized the power they've seized the power and muscle the press but but so far there are no countries in the world where the press has seized the power and most of the politicians thank you all very much [Applause] [Music] Ron Ziegler that was well done tom I find myself speaking third I thought s

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I find myself speaking third I thought s came before Z mr. Simon but I figure that with the time saving some time for questions that I have only a short period to speak so don't be concerned I haven't talked longer than eighteen and a half minutes since 1974 you have to think about that for a moment the I think it's been pointed out that the issue of secrecy in government has been an issue that has confronted this country from the outset of our republic particularly since world war ii and did not necessarily begin with the Pentagon Papers nor has it ended with the Pentagon Papers let me talk briefly about the Pentagon Papers Gerry touched on that it was a day after Tricia Nixon was married to edy Cox in June of 1971 when the New York Times ran on the front page the fact that it was going to publish from the archives some extensive volumes of the three decades of progressive involved in the United States and Vietnam at that time we in the government we in the White House had absolutely no idea what was contained in this material in fact we did not know that the vast majority of this material was classified secret and top secret the panelists I believe John Ken Cade pointed out and also Gerry warned were correct we did not at first feel that action was required as a matter of fact that President Nixon as he points out in his memoirs felt that politically we should move ahead without any action on the Pentagon Papers because it in fact traced involvement to be in in Vietnam on the on the part of the Kennedy and

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on the on the part of the Kennedy and Johnson administration and this could have been to the political advantage of the Nixon administration however as president and points out from the standpoint of policy the issue focused on protecting national security interest now it sometimes is overlooked that we did not know what was in the Pentagon Papers and we had people within the government Henry Kissinger being one of them who cautioned President Nixon in the most extreme terms most severe terms that the publication of the Pentagon Papers the publication of these secret documents could in fact break codes reveal clandestine sources and have a severe and negative impact on national security of the United States so President Nixon's decision to move to prior restraint until the government had an opportunity to evaluate the impact of these papers was the purpose the purpose was not to restrain the press the objective was not anti press the dilemma that President Nixon faced is what we're talking about secrecy in government where do you draw the line between the protection of national interests and national security and the public's right to know in our democracy it was felt that for national security purposes we had to move ahead I believe that that as distinguished as papers have been presented that the point is stretched in both mr. Rosell mr. Kincaid's paper as to the purpose of our action purpose of the president's action prior restraint was seriously considered and the impact that the prior restraint was sirak seriously considered before the decision

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seriously considered before the decision was made like to to cover one additional point in making an additional comment regarding John Kincaid's paper mr. Ellsworth of mr. Russo were indicted the question was even after the papers were published what does one do what does the government do when documents are stolen and released illegally to the public it's not a new issue and it's not an issue that ended with the Pentagon Papers Teddy white pointed out in his view that clearly mr. Ellsberg stole papers illegally enacted against the National Defense laws of the United States I agree with Teddy white mr. Kincaid does not I was surprised that it was not pointed out in the papers the fact that we as a country currently have a very important court case pending before the Fourth Circuit Court relating to the 1917 Espionage Act in that case is the case of John excuse me Sam Morrison Sam Morrison was a as most of you many of you may know Sam Morrison was an employee of the Pentagon top secret clearance Sam Morrison was also a stringer reporter for Jane's naval review in 1984 in 1985 Sam Morrison picked off of the desk of a colleague top secret photographs taken by our satellites of Soviet submarine the construction and he sent that to Jane's naval review in 1985 the federal government sought an indictment it received an indictment prosecuted Sam

[01:20:01 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=4801s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=4801s)

received an indictment prosecuted Sam Morrison under the 1917 Espionage Act and mr. Morrison was convicted by jury trial in this case the government did not move to prove the intent the intent that mr. Morrison had to do harm to the United States government it's simply prosecuted and one's case without the proof of intent and I would think that this would be a substantial concern it is somewhat of a concern to me in terms of focusing on the issue is there in fact a difference between an individual like John Walker stealing material and supplying it to a federal another government for 18 years with a clear intent to do harm to the United States versus an individual working in government who for a political or other motive Morrison's motive is unclear takes secret document and leaks it to Jane review which the association press picked up and ultimately it was published in the New York Times and The Washington Post so the issue does not stop with the Pentagon Papers the Fourth Circuit decision is going to be and is going to come down I believe after the first of your significant decision relevant to the question of prosecuting those who are in government and steal classified materials executive privilege in the use of executive privilege we have gone through periods in this country of extensive use of executive privilege historically those who are studying history will recall John moss John moss subcommittee

[01:22:00 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=4920s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=4920s)

recall John moss John moss subcommittee John moss a congressman from California who in the early 1950s when it was felt that there was extensive government secrecy or non national security items chaired the Subcommittee on government information policy in the House of Representatives at that time the bureaucrats in the Truman and Eisenhower administration were using executive privilege extensively for the purpose of not providing information to the press and to the American people 18 departments referred to executive privilege for refusal to submit materials and documents asked for by the press and by the Congress the John moss committee ultimately led to the 1967 passage of the Freedom of Information Act I believe that we have progressively to the conflict of our democracy tried in numerous ways to deal with this very complex issue of executive privilege and secrecy and government clearly secrecy and government should be limited President Nixon as a matter of fact felt that there was too much classification of government papers and attempted to move with the study to limit the declassification I believe that there should not be judicial or legislative legislative activity dealing with executive privilege I think we have enough already I believe in the u.s. versus Nixon case

[01:24:03 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5043s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5043s)

I believe in the u.s. versus Nixon case that was referred to earlier we brought executive privilege to the constitutional level under Article two I do not favor any additional judicial or legislative activity regarding executive privilege in my opinion the issue of executive privilege is grounded on attitude and credibility of the executive branch and I believe that the greater the credibility the better the attitude on the part of government

and federal officials in dealing with the release of public information the easier our republic will be able to deal with the issue of executive privilege I agree with with the point of view that those who are elected or appointed to positions of executive authority Authority must recognize that government in a democracy could not be wiser than the people I believe that the attitude held by government is extremely important in establishing credibility the American people in my opinion must feel that they are receiving from their government in a credible fashion what they feel they should be receiving and I believe that the establishment of credibility on the part of the government is relatively simple relatively easy easy I believe that there are six basic fundamental steps that a government can follow to establish credibility and therefore allow for greater ease and

[01:26:00 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5160s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5160s)

therefore allow for greater ease and acceptance of executive privilege statements when they are applied for national security and legitimate purposes first of all government should not cloak embarrassing situations and conceal shortcomings by exerting executive privilege it is rapidly found out and it is rapidly understood by the public I think that the spokesman and the president United States should only in all ways the standpoint of establishing credibility speak from a basis of fact should never shoot from the hip and they should never assume the answers I also feel that the President and spokesman for the president should never knowingly mislead or lie I think history has already shown that a democracy will not tolerate deception will not accept deception and I think we have seen that particularly in the contemporary time since World War two I also believe that president and spokesman should never overreact to criticism they should never look at the press as the enemy because if they do they tend to react in the negative and defensive fashion I also feel finally that a president and the administration must have a realistic view of how they are going to be perceived by the public and by the press what is good for one individual is not good for the other but a firm and clear wrecking necking recognition of that perception I think is extremely important so I think in terms of

[01:28:02 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5282s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5282s)

important so I think in terms of executive privilege secrecy in government it goes beyond legalities even though they're important it it goes beyond establishing and our democracy a set of rules I believe it goes to attitude I believe it goes to communications and I believe it goes fundamentally to the credibility of the presidency of the United States a president has a responsibility to establish and maintain the credibility of his office now just to conclude I have heard and we read about the many faces and many personalities of the President Nixon I was one of the president's staff men who spent time with him wind power past flying over Missouri on the way to San Clemente and to self-imposed exile and I was with President Nixon for almost a year in San Clemente Richard Nixon is an extremely complex individual but I really in the time that I dealt with them and worked with him over a period of seven years I personally saw only one face of Richard Nixon a very intent complicated complex individual who was constantly strategizing constantly working at his position as president and president-elect constantly re-evaluating and reassessing himself and his positions one thing I saw in San Clemente California during the the period shortly after the resignation and during the year that that he was there and I was there with him he was there long President Nixon fully and totally

[01:30:02 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5402s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5402s)

President Nixon fully and totally recognized and recognizes the shortcomings of his administration and he struggled in that evaluation and he agonized about the dilemma he placed his men in and the sacrifices that they had to make I saw him go through that struggle but I also saw a man with courage accept his shortcomings accept his failures accept the disgrace that he received in resigning and did not destroy himself and I believe in his memoirs and those who are studying the Nixon presidency I would suggest that you read Richard Nixon's memoirs in his memoirs he said and he points out that the period of his presidency the Vietnam War Watergate was a period of great division in the country a period of great controversy there were excesses on the part of many parties there were excessive those who opposed the war there were excesses within the Nixon administration and I believe he believes as he wrote in his memoir that the actions and the

reactions and the excesses of all parties we'll be judged by history and as he points out he is prepared to live with that judgment and I believe he feels that way today thank you for having me and I look forward to your questions Howard Simon Eric thank you and they clean up discussing so I'm gonna do just that and clean up I don't know if Judge Wiggins is here but I want him to know

[01:32:00 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5520s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5520s)

Wiggins is here but I want him to know that Helpmann is innocent I am the Lindbergh baby for those of you who were at the earlier meeting I'm the managing editor who was the managing editor and Ben Bradley was not he was the executive editor I met President Kennedy once in my life and I've never met President Nixon for Victor Navasky everywhere I speak particularly the groups of journalists I get asks for groups interested in journalism I get asked three questions who is deep throat what ever happened to Janet cook she's the young lady who made up a story I don't know if Judge Wiggins is in the audience nope every time I speak to groups interested in journalism or to journalists I get asked three questions only the first is who is deep throat the second is what ever happened to Janet Cooke who is the young lady who made up a story about Jimmy the heroin addict and we gave back the Pulitzer Prize we didn't deserve for a made-up story and the third pressing question in American journalism is when are you going to invent an ink that doesn't come off in your hands to Tom Brokaw Madison would have been the leaker to my context colleague and friend Jerry Warren I think that respect for the White House will return when the White House shows some respect for people and law as dumb as my friend and colleague Hank Johnson put it well recently of one administration had the arrogance of power and the president ministration had the arrogance of popularity too Ron Ziegler on his six steps I think we need only one and that is to tell the truth

[01:34:01 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5641s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5641s)

finally I'd like to judge Wiggins also said something that bothered me about where were you meaning the pressin going back and he also said this about the congress looking at other presidents and what they did and that reminds me of a story there was a wonderful journalist he's now get a wonderful journalist in Washington DC by name of Peter lizard or from Chicago and when Ron Nessen took over from Ron Ziegler there was a press conference that Ron Nessen held and he made this wonderful speech saying that he wasn't gonna do what run Ziegler did things have changed White House would be different and Liz aguar raised his hand and he said mr. reservoir what do you have to say and Peter stood up and said mr. Nelson two runs don't make a right and mr. Kincaid's paper in mr. Kincaid's paper he says that about the Pentagon Papers which I also was involved in that at the post that first President Nixon was not especially disturbed by the publication of the papers their contents after all dealt with policymaking prior to his own administration and were therefore likely to be embarrassing to the Democrats just before an election year however the president's National Security Advisor Henry Kissinger prevailed upon the President to do something about this quote massive hemorrhage of state secrets close quote and it's it's the most delicious thought of all and one that I've harbored from time to time which is that a tenth temper tantrum by Henry Kissinger resulted in Watergate that it indeed started a chain of events that led to the resignation of mr. Nixon the Pentagon Papers were fascinating no one read them at the time the site issue became the issue and that was the papers the newspapers the New York Times The Washington Post the fight between the administration and to this day I really don't know how many people have ever read the Pentagon Papers and there

[01:36:00 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5760s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5760s)

read the Pentagon Papers and there weren't many secrets of the volumes that had something that might compromise national security were left out by the newspapers and I'd like to talk a bit about secrecy because my experience in Washington in the 30 years in Secrets was that you can't work there we'll even live there without bumping into a secret the over-classification system is so vast that everything is classified and classified for many reasons a very few secrets are classified because they are true secrets many more are classified to save embarrassment gain cost overrun hide of cost overrun ratted to protect somebody's turf to do lots of things and indeed another reason for classification is habit it's easier just to stamp something

secret then argue whether it should or it shouldn't but my experience in Washington has been was that most real honest-to-god secrets walk out the front door they don't show up in The Washington Post or the New York Times used to be in the good old days that the secrets were taken by people who had an ideology they were either pro-russian or pro-nazi or pro something else that those days are gone now it's just pure greed they sell the secrets and most of the important secrets that have been given away my experience in the last 10 years have all been for money and have been the most important secrets like the kh-11 satellite spy satellite or what the walkers did to our submarine fleet I think we want to get to Watergate for just a moment because I think there are three water gates fascinating to me I think there are many many unanswered questions and I would hope that young journalists would go back and revisit it there are three that still puzzle me and

[01:38:02 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5882s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=5882s)

there are three that still puzzle me and I understand that mr. Magruder may have answered one here yesterday I wasn't here but the three questions are who is deep throat and unless it seems to me unless Bob Woodward comes forward or deep throat comes forward we may never know to what was really on the eighteen and a half minutes and unless somebody in this audience who knows or mr. Nixon who knows comes forward and tells us we may never know and what were they doing in the Watergate now there's lots of speculation I understand mr. Magruder suggested it had to do with Kenny O'Donnell and Howard Hughes and that's what the bug was planted for and that's been avenue for speculation for a long time in my view but nobody has really come forward and said this is it so I think there are three primary questions and as I say I would love to have Watergate revisited finally I have a crude measuring-rod about free press and it's it's that the freer the press the freer the society and I go around the world with my little string for a measuring string and do this in countries and find that arguably we have the freest press in the world and I think that is an essential part of democracy and something we oughta treasure and and you know we may not be civil all the time Jerry and that's okay with me in the latter days of Watergate I had a pang of conscience that said to me I know what the administration's up to they've got a unique way to celebrate the Bicentennial they're gonna do away with the Bill of Rights and I think the press good or bad no paper is that good for all the time or that bad all the time is one ingredient that's an essential part of democracy and you ought to be all be grateful for the First Amendment thank you [Applause]

[01:40:06 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=6006s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=6006s)

[Applause] thank you we're running late so what I'm going to do is those who want to ask questions line up at the microphones I'm going to give our panelists the the paper writers a chance very briefly to respond to the remarks that were made if they would like to from their seats maybe mr. Kincaid do you want to start just one couple of comments in response to mr. Warren's comments the Supreme Court did not hold that prior restraint is out-of-bounds in the American system that held only in that particular situation and the number of the justices said they would entertain prior restraint in terms of secrecy laws and so on the question is what laws apply in this situation and why did the Justice Department have such difficulty with this prosecution I think a major point here that is this mystique about top secret and the last Speaker I think touched on that that this is a rubber stamp that people put on documents and the executive order provides rules for classifying documents and during the trial of Ellsberg and Russo when the Defense Department officials were asked what kind of training they had received as to what they should classify or not classify most of them said they received no training they simply had the rubber stamps on their desk and they used them because everybody else did and one person said well they showed me a film and this movie told me to beware of good-looking women with blond hair and that was the extent of my training so that you have a situation where you have a potential prosecution of an individual or a newspaper for releasing information which has the stamp top-secret on it with the Nixon administration arguing that you cannot maintain that it was improperly classified and and this was the point I was raising about Criminal Code revision that what the

[01:42:01 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=6121s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=6121s)

Code revision that what the administration could not get through the trial it was trying to get through Criminal Code revision and that would have if the Congress rejected it would have held that the impropriety of the top-secret stamp would not have been a defense I have mr. Ziegler's point about the Morris case as well take and I did not discuss it because this was about Nixon but I do agree with them it's a very disconcerting - case made all the more disconcerting by the repugnancy of him selling the information to the to the magazine but it does raise exactly the same kind of issue that was raised in the Pentagon Papers trial thank you okay just very quickly so we can get to your questions I thought mr. Ziegler's steps towards establishing credibility was very useful and I'd like to take some time to look at those categories and reassess some of what I've had to say about it I think it is much more complex than the issue of just tell the truth because sometimes there are certain things that constitute the truth that simply cannot be exposed for certain reasons and I think mr. Ziegler's assessment is much more sophisticated along those lines I would disagree with mr. Brokaw's assessment that we need a statutory definition I think we do need some general definitions in terms of what is acceptable in asserting executive privilege but it cannot be very specific it can only be very general and that goes back to the categories that I raised previously and again it has to be left up I think to the branches of government to resolve these situations on a case-by-case basis okay I would like to open the questions and I'm going to take the prerogative of the moderator to ask the first question to any one of the panelists who would care to answer it that is Morten Halpern whose phone was tapped as the result of a service in the Nixon administration has argued recently that covert action is incompatible with democracy and that all of the things that we're talking about today in effect

[01:44:01 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=6241s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=6241s)

that we're talking about today in effect are made are implicit in the idea that covert action is compatible with democracy secrecy lies and illegal action inevitably flow from covert action in this view do any of you have anything to say about that I think that you can't have a blanket denial of covert action as a tool to protect democracy witness what happened in world war two there are a number of covert actions then protected I think not only our system but free people throughout the globe so I think that you cannot say uniformly that covert action ought not to be engaged in by a system available I should say he he makes the argument for a peacetime and says that in wartime you're not you used to spend the rules of democracy but we don't want to do that as a routine course of national life the other comment said no no I will turn the floor of it to the first questioner if you would identify yourself first please my name is Steven Gilroy I have a question for mr. Siegel and mr. Brokaw I was wondering mr. Ziegler in particular if you could recount for us the details of a strange event in 1973 I think in New Orleans when President Nixon was angry with the press and I think he physically ordered you to take care of the press I was wondering how did you react to that personally and mr. Brokaw what did the members of the press think about that strange behavior of a president against the press we had on that day received what was considered to be quite a serious assassination threat and President Nixon was under some strain he was on his way as I recall back from San Clemente and he was going in Key Biscayne I mean that he was going into wflw Hall to give a speech that he really didn't want to give and I was walking behind him and I believe he turned around and saw Helen Thomas and Dan Rather I believe in a couple other members of the press kind of closing in on him and we were walking up a embankment so he turned around and he said go take care of them which appeared

[01:46:07 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=6367s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=6367s)

said go take care of them which appeared on television to be a shove and and that was what was recorded I think one thing that should be noted that as soon as we got back on Air Force One I was sitting in the staff section and the first thing he did was to walk back into the staff section of Air Force One put his hand on my shoulder in front of the staff and say I'm sorry for that back there that's what happened and it was of course widely I wasn't there that day so I can't I mean it was widely reported as you know and the way that it was I was witness to a much smaller incident with another member of the staff we went out to Xenia Ohio which there had been a bad tornado the president went out and a act of compassion to to tour the tour the remains of the this devastated town and also because he was in some difficulty because of Watergate and we had some dark suspicions that he might have been there because it made it look like a more compassionate

human being at that time although that was not reported that night as a motivation because we simply didn't know that but he was in a it really was a shocking experience to walk through this town and see one home after another level than people still wandering around in a kind of state of shock and he was a small town and we were down on the Main Street just a few of us and he was talking to some of the townspeople who were huddled around him looking for some relief emotionally and financially at that point from the government and he was saying this is the worst thing I've seen since I went to the Alaska earthquake it was just that this is much worse because of the personal devastation it was very quiet and there was a woman who came down the street who said who is that and one of the Secret Service agents said that's president United States she said that Nixon now he's trying to carry on this conversation with these people and you could hear this voice ringing out down Main Street and they suggested Nixon and beat him get him out of here

[01:48:02 \(https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=6482s\)](https://www.youtube.com/watch?v=2KJS5VxwLiQ&t=6482s)

Nixon and beat him get him out of here we don't want him around here well you could see the color go up in the president's face understandably and we turned to walk into the town hall there and Steve bull said right this way mr. president said I know which way it is and gave him a shove about 15 feet into the hall and went on in that was an incident that got only minor attention that night but it was an understandable almost human reaction to something that had happened to him that day thank you those are the only two shoving incidents that I'm aware sir my name is David Sarnoff no significant relation to the founder of the NBC and RCA this question is primarily directed to mr. Brokaw recently political scientist Michael parenthese spoke here at Hofstra and he said that most media sources in the country are conservative and there are very few liberal sources of media summing up what he said he said that editors and owners refused or reluctant to present positions of those whose views go against that of advertisers of the media and the media's opinions themselves thus the public does not get a full spectrum of the news and I just wanted to hear from the media side that Professor will do very well on this circuit because he has a singular point of view it seems to me most most of the complaints that we receive and I think Howard will back this up or just

END